

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A. BADHARUDEEN

MONDAY, THE 16TH DAY OF JUNE 2025 / 26TH JYAISHTA,

1947

CRL.A NO. 968 OF 2007

AGAINST THE JUDGMENT DATED 04.04.2007 IN CC
NO.706 OF 2005 OF JUDICIAL MAGISTRATE OF FIRST CLASS-
I, PERINTHALMANNA

APPELLANT/COMPLAINANT:

K.RAMACHANDRAN, S/O.NARAYANAN NAMBIAR,
KERALA ROADWAYS LTD., BRANCH MANAGER,
PERINTHALMANNA.

BY ADV SRI.M.SHAJU PURUSHOTHAMAN

RESPONDENTS/ACCUSED:

- 1 GOPI, S/O.KELU,
EDAKKATTUKUNDIL HOUSE,
KARUVAMBRAM AMSOM DESOM, MANJERI, MANJERI.
- 2 STATE OF KERALA REP. BY THE
PUBLIC PROSECUTOR, HIGH COURT OF
KERALA,ERNAKULAM.

BY ADV SHRI.P.VENUGOPAL
PUBLIC PROSECUTOR SMT. ADV SHEEBA THOMAS

THIS CRIMINAL APPEAL HAVING COME UP FOR ADMISSION
ON 10.06.2025, THE COURT ON 16.06.2025 DELIVERED THE
FOLLOWING:

“C.R”

A. BADHARUDEEN, J.

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Crl.Appeal No.968 of 2007
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Dated this the 16th day of June, 2025

J U D G M E N T

Being aggrieved by the judgment in C.C.No.706/2005 dated 04.04.2007 on the files of Judicial Magistrate of First Class Court-I, Perintalmanna, the complainant has come up in appeal arraying the accused as the 1st respondent and State of Kerala as the 2nd respondent.

2. Parties in this appeal shall be referred to as ‘complainant’ and ‘accused’ with reference to their status before the trial court, hereafter.

3. Heard the learned counsel for the complainant, the learned counsel for the accused and the learned Public Prosecutor in detail.

4. Perused the trial court records and the



judgment under challenge.

5. Short facts:

The complainant Mr.K.Ramachandran filed a complaint before the Judicial Magistrate of First Class pursuant to dishonour of a cheque dated 20.06.1997 drawn on Vijaya Bank, Manjeri Branch, for Rs.65,000/- issued in favour of Kerala Roadways Ltd., by the accused. The trial court took cognizance for the offence punishable under Section 138 of the Negotiable Instruments Act (for short 'N.I Act' hereafter) and proceeded with trial.

6. During trial, PW1 and PW2 were examined and Exts.P1 to P6 series were marked on the side of the complainant.

7. No defence evidence was adduced though opportunity was provided to the accused to adduce evidence

8. On evaluation of the evidence, the trial court acquitted the accused. The reasons stated by the trial court to acquit the accused are two fold. The first reason as could be read out from the judgment is that there was no legal notice within the stipulated period and the second reason is that the cheque was issued towards the money due towards Keala Roadways Limited and not pertaining to any personal liability of the



complainant.

9. On hearing both sides, the questions arise for consideration are:

(i) Whether it is legally permissible for the manager of a firm or company or a concern to sue in his individual capacity for the money due towards the firm, company or the concern? In such cases who is competent to prosecute the case?

(ii) Whether the verdict of the trial court would require interference?

(iii) The order to be passed?

Point No.(i)

10. In this case the trial court acquitted the accused mainly finding that the money covered by Ext.P1 cheque was due towards Kerala Roadways Ltd. and the same is not a personal liability towards the complainant, who was the manager of the firm. In a prosecution alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881 ('N.I Act' for short hereinafter), pursuant to dishonour of the cheque issued in favour of a firm or a company or a



concern, the person who is legally entitled to lodge a complaint against the payer of the dishonoured cheque is the firm, company or the concern. No doubt, the firm, company or concern could be represented by an authorised officer. Section 142(1)(a) of the N.I Act provides that no Court shall take cognizance of any offence punishable under Section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque. So the persons entitled to lodge a complaint alleging commission of offence under Section 138 of the N.I Act are (1) Payee and (2) the holder in due course. The term 'payee' has been defined under Section 7 of the N.I Act as the person named in the instrument to whom or to whose order the money is by the instrument directed to be paid. As per Section 8 of the N.I Act, the 'holder' of a promissory note, bill of exchange or 'cheque' means any person entitled in his own name to the possession thereof and to receive or recover the amount due thereon from the parties thereto. As per Section 9 of the N.I Act, 'holder in due course' means any person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof. On a combined reading of Section 142(a) r/w



Sections 7 to 9 of the N.I Act, competent person to make a complaint alleging commission of offence punishable under Section 138 of the N.I Act is the 'payee' or 'the holder in due course' of the cheque. Payee is the person named in the instrument. Here the cheque was admittedly issued towards the liability of Kerala Roadways Ltd. and therefore the consideration of the cheque is due to Kerala Roadways Ltd. The petitioner, being the manager, would not come within the purview of definition of either 'payee' or 'holder in due course' since the amount of consideration is not personally due to the complainant. The legal position is so clear that when a cheque is issued by a person in favour of a firm, company or concern, the 'payee' thereof is the firm, company or concern and the holder in due course is also the firm, company or concern, when the firm or company or concern alone is entitled to receive the money, i.e. the possessor of the cheque legally is entitled to get the consideration. When an authorised officer representing the company is doing such exercise the same is for and on behalf of the firm, company or concern and not on his personal capacity. Therefore, in such cases in order to succeed a prosecution alleging commission of offence punishable under Section 138



of the N.I Act, when a cheque issued in favour of the firm, company or concern was dishonoured, the firm, company or concern must be the complainant being 'payee' or 'the holder in due course', though the firm, company or concern can be represented by an officer, who is legally authorised to represent the firm, company or concern, after arraying the firm, company or concern as the complainant. The only exemption is in the case of a proprietary concern, ie. a sole proprietorship, where the proprietor can lodge complaint being the payer of the cheque.

11. In the instant case, Ramachandran in his individual capacity launched prosecution against the accused alleging commission of the offence punishable under Section 138 of the N.I Act, where the money is due to the firm and not to him. If so, the prosecution is defective and not as mandated by law. Therefore, the trial court rightly found that the complainant's case would not succeed and the said finding of the trial court is only to be justified.

In the result, this appeal fails and is accordingly dismissed.

Sd/-

A. BADHARUDEEN, JUDGE

rtr/